

(C) *Naviera Neptuno, S.A.*

FMC No. 5—Applicable BETWEEN United States Pacific Ports AND Peru and Pacific Coast Ports in Chile, Colombia and Ecuador.

(D) *Naviera Universal, S.A. (Uniline)*

FMC No. 2—Applicable BETWEEN United States Ports and Points AND Ports and Points in Central America, South America, Mexico, and the Caribbean.

(ii) The following conference tariffs, or any other conference tariff covering the Trade, including intermodal tariffs covering service from interior U.S. points:

*Atlantic & Gulf/West Coast of South America Conference*

FMC No. 2—Applicable FROM United States Atlantic and Gulf Ports TO West Coast Ports in Peru and Chile via the Panama Canal.

FMC No. 3—Applicable FROM Points in the United States TO Points and Ports in Chile, Peru, and Bolivia moving through United States Atlantic and Gulf Ports of Interchange.

FMC No. 5—Applicable FROM Points and Ports in Chile, Peru and Bolivia TO Points and Ports in the United States, moving through United States Atlantic and Gulf Ports of Interchange.

FMC No. 6—Applicable FROM Chilean and Peruvian Ports of Call via the Panama Canal TO Ports of Call on the Atlantic and Gulf Coasts of the United States.

(iii) Any other tariff which may be filed by or on behalf of the carriers listed in paragraph (b) of this section.

(iv) In the event of suspension of tariffs pursuant to this paragraph, all affected conference or rate agreement tariffs shall be amended to reflect said suspensions. Operation by any carrier under suspended, cancelled or rejected tariffs shall subject said carrier to all applicable remedies and penalties provided by law.

(c) *Source of fees.* Any fees assessed by paragraph (b)(2) of this section against Peruvian-flag carriers operating pursuant to any Agreement filed with the Federal Maritime Commission providing for revenue pooling, joint service, space-chartering or other joint operations shall be paid by such Peruvian-flag carriers without affecting the revenue shares or amount of revenue earned by non-Peruvian-flag carriers operating pursuant to such Agreements.

(d) *Effective Date.* Paragraph (a) of this section is effective on March 28, 1989. The date upon which paragraphs (b) and (c) of this section shall become effective shall be determined by further order of the Commission amending this section.

**§ 586.3 Conditions unfavorable to shipping in the United States/Ecuador trade.**

(a) *Conditions unfavorable to shipping.* (1) The Federal Maritime Commission has determined that the Government of Ecuador ("GOE") has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws, decrees and regulations which unreasonably restrict non-Ecuadorian-flag carriers from competing in the liquid bulk trade from the United States to Ecuador on the same basis as Ecuadorian-flag carriers.

(2) Resolution No. 012/87 unilaterally reserves export liquid bulk cargoes from the United States to Ecuador for carriage by Ecuadorian-flag carriers who utilize Ecuadorian-flag vessels or charter third-flag vessels, or U.S.-flag carriers who utilize U.S.-flag vessels. The enforcement of this system discriminates against U.S. carriers and other maritime companies desirous of participating in this Trade through the charter of third-flag vessels, and denies to non-Ecuadorian-flag carriers effective and equal access to liquid bulk cargoes in the Trade. It also discriminates against U.S. shippers and exporters whose opportunities to select a carrier of their choice are restricted and whose ability to compete in international markets is hampered.

(b) *Ecuadorian-flag carrier—assessment of fees.* (1) "Voyage," for purposes of this section means an outbound movement from the United States to a foreign country by a vessel engaged in the United States trade. Each outbound movement constitutes a separate voyage. The transportation of cargo by water aboard a single outbound vessel between ports in the United States and ports in Ecuador under one or more bills of lading issued by or on behalf of the Ecuadorian-flag carrier Maritima Transliga, S.A. ("Transliga"), whether on board vessels owned or operated by Transliga or in space chartered by Transliga in vessels owned or operated by others shall be deemed to constitute a voyage.

(2) For each voyage completed after the effective date of this section, Transliga shall pay to the Federal Maritime Commission a fee in the amount of \$50,000. The fee for each voyage shall be paid by certified or cashiers check made payable to the Federal Maritime Commission within 14 calendar days of the completion of the voyage for which it is assessed.

(c) *Report.* Transliga shall file with the Federal Maritime Commission a report setting forth the names of vessels

operated by Transliga in the Trade, whether owned or chartered; the names of vessels on which Transliga has chartered space for the carriage of cargo in the Trade, and the names and addresses of the owners of such vessels; the date of each voyage completed in the Trade; the amount of cargo carried; and the amount of fees assessed pursuant to paragraph (b)(2) of this section during the preceding calendar quarter. Each such report shall include a certification that all applicable fees assessed pursuant to paragraph (b)(2) of this section have been paid, and shall be executed by the Chief Executive Officer under oath. Each report shall be filed within 15 days of the end of the applicable calendar quarter.

(d) *Refusal of Clearance by the Collector of Customs.* If Transliga shall fail to pay any fee assessed by paragraph (b)(2) of this section, or fail to file any quarterly report required by paragraph (c) of this section within the prescribed period for filing, the Secretary of the Commission shall request the Chief, Carrier Rulings Branch of the U.S. Customs Service to direct the collectors of customs at ports in the U.S. Gulf of Mexico to refuse the clearance required by section 4197 of the Revised Statutes (46 U.S.C. app. 91) to any vessel owned or operated by Transliga.

By the Commission.

Joseph C. Polking,  
Secretary.

[FR Doc. 90-1270 Filed 1-19-90; 8:45 am]

BILLING CODE 6730-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Office of the Secretary****48 CFR Part 303****Procurement Integrity**

**AGENCY:** Office of the Secretary, HHS.  
**ACTION:** Suspension of interim rule.

**SUMMARY:** The Office of the Secretary, Department of Health and Human Services, is amending the Health and Human Services Acquisition Regulation (HHSAR), title 48 chapter 3, to suspend the interim rule on procurement integrity which was published in the *Federal Register* on July 31, 1989, (54 FR 31527). As a result of the enactment of section 507 of the Ethics Reform Act of 1989, the Federal Acquisition Regulation (FAR) has been amended by Federal Acquisition Circular (FAC) 84-54 to suspend the FAR regulations



implementing procurement integrity for a one year period beginning December 1, 1989, and ending November 30, 1990. Accordingly, the HHSAR is amended to conform to the FAR, as amended by FAC 64-54.

**DATES:** Effective December 1, 1989, sections 303.104, 303.104-4, 303.104-5, 303.104-6, 303.104-9, 303.104-11 and 303.104-12 are suspended beginning December 1, 1989, through November 30, 1990.

**FOR FURTHER INFORMATION CONTACT:** Norman Audi, Procurement Analyst, Division of Acquisition Policy, (202) 245-0326.

**SUPPLEMENTARY INFORMATION:** The interim rule is suspended beginning December 1, 1989, and ending November 30, 1990. The interim rule will become effective again on December 1, 1990.

#### List of Subjects in 48 CFR Part 303

Government procurement.

Dated: January 11, 1990.

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

As indicated in the preamble, chapter 3 of title 48, Code of Federal Regulations, is amended as shown.

1. The authority citation for part 303 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

#### PART 303—[AMENDED]

303.104, 303.104-4, 303.104-5, 303.104-6, 303.104-9, 303.104-11 and 303.104-12 [Suspended]

2. Sections 303.104, 303.104-4, 303.104-5, 303.104-6, 303.104-9, 303.104-11 and 303.104-12, are suspended for a one year period beginning December 1, 1989, and ending November 30, 1990.

[FR Doc. 90-1300 Filed 1-19-90; 8:45 am]

BILLING CODE 4150-04-M

#### DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

#### 50 CFR Part 641

[Docket No. 90926-9277]

RIN: 0648-AC16

#### Reef Fish Fishery of the Gulf of Mexico

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA issues this rule to implement Amendment 1 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP).

This rule (1) requires a permit for vessels harvesting reef fish for sale; (2) establishes a 50 percent earned income criterion to qualify for a permit; (3) provides for the charging of fees to cover the administrative costs of issuing permits and trap tags; (4) requires reporting by operators of charter vessels; (5) requires permitted vessels to display identification numbers; (6) reduces the exemptions to the size limit for red snapper; (7) establishes size limits for other major species; (8) extends the stressed area where certain gear is prohibited to include all waters off Texas out to the 30 fathom isobath and all waters off Louisiana out to the 10 fathom isobath; (9) prohibits use of longline and buoy gear for taking reef fish inside of 50 fathoms to the west and inside of 20 fathoms to the east of Cape San Blas, Florida; (10) establishes bag limits for certain snappers, groupers, and amberjack; (11) provides for the possession of two days' bag limits for charter vessels and headboats on trips in excess of 24 hours; (12) restricts vessels with trawl or entangling net gear aboard to the bag limits; (13) establishes annual commercial quotas for red snapper and deep- and shallow-water groupers; (14) prohibits fishing for and sale of reef fish when an annual quota for the species is reached; (15) reduces the number of traps that may be fished by a vessel; and (16) makes other technical changes to facilitate compliance. The intended effects of this rule are to reduce fishing mortality on the reef fish stocks so that stocks may be protected and rebuilt, to reduce user conflicts, and to maximize net economic benefits from the reef fish fishery.

**EFFECTIVE DATES:** February 21, 1990, except that § 641.4 is effective January 22, 1990; § 641.6, § 641.7(b), (e), (p), (r), and (s), and § 641.24 are effective April 23, 1990; and § 641.7 (t) and (u) are effective February 21, 1990 through April 23, 1990.

**FOR FURTHER INFORMATION CONTACT:** William R. Turner, 813-893-3722.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the FMP prepared by the Gulf of Mexico Fishery Management Council (Council), and its implementing regulations at 50 CFR Part 641 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*

Amendment 1 is a major revision of the FMP which, to the extent allowed by the data, addresses snappers, groupers, and other reef fish on a species specific basis. This change from the FMP's approach of addressing snappers and groupers as a single mixed species

complex was made possible by an expended reef fish data collection effort by NMFS and the states in recent years. Stock assessment analyses based on these data indicate red snapper are severely overfished and other species require reductions in fishing mortality to assure that the spawning stock biomass is maintained at a level adequate to prevent reductions in recruitment to those species or stocks. As a consequence of these analyses, Amendment 1 contains measures to reduce fishing mortality largely by imposing bag limits, quotas, size limits, and gear restrictions. It also provides a procedure for setting total allowable catch (TAC) annually based on stock assessments and for implementing or adjusting certain types of management measures to achieve TAC.

#### Background

In 1984, NMFS implemented, cooperatively with the states, a trip interview program which collected length-frequency and other biological and statistical information on landings of reef fish by species. Collection of landings data for groupers by species instead of by family was also initiated. These data sets along with similar information collected under the marine recreational fishery statistics survey, initiated in 1979 and available by 1984, surveys of Gulf charter and headboat fisheries, and fishery independent information from the southeast area monitoring and assessment program provided a data base that allowed stock assessments to be undertaken for major reef fish species.

The stock assessments for red snapper and other species were initiated by the Southeast Fisheries Center (SEFC) of NMFS in 1986 and were completed by SEFC and the Council in 1988. The stock assessments for red snapper concluded that the fishery was being subjected to recruitment overfishing and that the spawning stock biomass per recruit ratio (SSBR) was likely no greater than 4.8 percent of the unfished level. This analysis and those for the dominant groupers indicated that to restore the spawning stocks to a 20 percent SSBR level, reductions in fishing mortality on the order of 60 to 70 percent would be necessary by the year 2000 for red snapper and on the order of 20 percent over a shorter period of time for the groupers. Size limits, bag limits, and other reductions in harvest levels necessary to restore each species or species group to the 20 percent SSBR (i.e., the Council's goal for long-term optimum yield (OY) from the fishery)



and the supporting analyses are set forth in Amendment 1.

Problems in the fishery, the management objectives, the specification of OY, the definitions of overfished and overfishing, and each of the management measures in Amendment 1 were discussed in the proposed rule (54 FR 41297, October 6, 1989) and are not repeated here. In addition, other changes to the existing regulations, outside the scope of the regulations to implement Amendment 1, were discussed in the preamble to the proposed rule and are not repeated here. These additional changes were proposed to facilitate enforcement, including prohibition of possession of dynamite and similar explosives aboard reef fish vessels, and to make corrections and clarifications.

#### Comments and Responses

Numerous criticisms on the proposed rule were received, primarily from the commercial fishing sector which is most heavily impacted by Amendment 1. Three Council members criticized the amendment and submitted minority reports containing their respective objections. Three commercial fishing organizations, a state marine fisheries commission, the U.S. Fish and Wildlife Service, many commercial fishermen, and a few recreational fishermen commented on virtually every measure of this amendment. In general, most criticism was received in regards to the proposed size limits and quotas, gear restrictions, area restrictions, and income requirements for commercial permits. A few commentators objected that the proposed red snapper and jewfish restrictions were insufficient to protect these species from stock collapse. All comments are addressed below.

#### Size Limits and Quotas

*Comment:* A state marine fisheries commission commented that the proposed red snapper restrictions do not provide sufficient protection for the stock to recover within the specified 10-year time frame. The commission recommended that the Secretary of Commerce (Secretary) adopt a management measure that had been rejected by the Council. That measure would have immediately reduced fishing mortality by 74 percent to rebuild spawning stock biomass per recruit (SSBR) to the 20 percent level (relative to the unfished condition). The reduction would have been achieved by a two fish recreational bag limit and 1.4-million pound commercial quota. The commission indicated that short-term economic and social considerations

should not be allowed to jeopardize the future of the red snapper fishery, and that in the absence of more restrictive harvest limits, this fishery would be closed entirely within five years.

*Response:* While the seven fish bag limit and 3.1-million pound quota for the initial fishing year exceed the harvest level required to rebuild the red snapper stock, they are expected to check the rate of decline. At the same time, the amendment contains procedures to address TAC annually in this fishery. Under those procedures, annual TAC decisions are to be guided by the range of acceptable biological catch specified by annual stock assessments and, although a series of catch levels may be set to fall within that range within three years or less, those decisions must ultimately be consistent with stock rebuilding goals. This strategy should prevent overfishing and rebuild the spawning stock but allow short-term social and economic disruption to be minimized where feasible and appropriate. NOAA, therefore, approves the harvest levels established by the Council for the initial fishing year, but expects that future harvest levels will be scaled down commensurate with the findings and recommendations contained in annual stock assessment reports.

*Comment:* A charter boat captain indicated that a seven fish limit on red snapper would cause severe economic impacts and instead recommended a limit of 10 to 12 red snapper per person per day. The implication was that commercial boats catch fish by the thousands, whereas charter boat customers "fish for fun" and take only a small amount.

*Response:* NOAA reiterates that even with the seven fish bag limit during the initial year, harvest will exceed the level required to rebuild the red snapper stock. During subsequent fishing years, harvest levels are likely to be reduced substantially to rebuild the stock within the time frame specified (10 years) for the recovery program. Available data indicate a significant number of red snapper are caught recreationally, including catch from charter vessels and headboats. Excessive bag limits would contribute to the collapse of the red snapper stock and result in even greater economic disruption to the fishery. It is appropriate that all users share in the burden of protecting and restoring this depleted resource. Furthermore, the seven fish daily bag limit is believed proportionate to the 3.1-million pound commercial quota in terms of reducing red snapper fishing mortality.

*Comment:* Two commercial fishing organizations objected to the 20-inch size limit on red grouper. The organizations recommended starting with a lower size limit of 16 to 18 inches, and gradually increasing it to 20 inches over a period of a few years, and indicated that a graduated approach appears more reasonable in view of the less drastic approach being taken on red snapper. The organizations also indicated that the commercial quota on grouper in addition to the 20-inch size limit will completely destabilize the fishery and, if a closure is invoked, the market for Gulf grouper may be replaced by imports. Finally, it was suggested that quotas should not be implemented until needed basic fishery information is acquired by the NMFS, otherwise funding and manpower to monitor additional quotas will be at the sacrifice of the fishery statistics program.

*Response:* Although the impacts of the initial management measures selected for red snapper may be less severe than for red grouper, the recovery program for red snapper could result in more drastic restrictions in the near future. Lower size limits on red grouper initially would allow growth overfishing to continue and result in the harvest of more females to the detriment of the population.

Closure of a fishery upon reaching quota always causes a certain amount of destabilization within the fishery and increases reliance upon imports. However, less severe size limitations or uncontrolled amounts of harvest could reduce the resource to levels where even more restrictive measures, along with their associated impacts, are needed.

Notwithstanding limitations on Federal funds and manpower, NMFS is currently making plans for quota monitoring and data collection activities associated with Amendment 1. Although a certain but unknown amount of reprogramming might be necessary, NMFS plans to utilize general canvass data to monitor reef fish landings in Alabama, Mississippi, and Louisiana. Landings data collected under state programs will be used for Florida and Texas. Since these data are not available on a real-time basis, NMFS plans to estimate closure dates based on projected landings of regulated species or species groups.

*Comment:* A number of commercial fishermen opposed the 20-inch minimum size limit for certain groupers and the annual quotas proposed for the deep-water and shallow-water groupers. One of the minority reports also registered opposition to the proposed quotas and the 20-inch size limit for red grouper.



Objection to the proposed quotas was based mainly on the insufficiency of landings data that historically have been collected under a voluntary reporting system. The objectors suggested that a size limit be imposed initially, and that quotas be instituted, if warranted, only after a reliable data base has been established. Some suggested that the size limit should be set at 18 inches, rather than 20 inches, to reduce initial impacts on fishermen and to conform with the Florida regulation since the preponderance of grouper are landed in Florida, and none of the other states has a size limit on grouper.

**Response:** The primary objective of Amendment 1 is to achieve an SSBR level of 20 percent to restore overfished reef fish resources. According to available scientific information, some of the groupers (red, Nassau, black, gag, and yellowfin) are experiencing growth overfishing and reductions in fishing mortality are needed to achieve a 20 percent SSBR level of these species. Models prepared showed the reductions that are necessary to achieve the SSBR goal at certain size limits. For most overfished species, a combination of minimum size limits, bag limits, and quotas was selected to reduce fishing mortality and promote stock rebuilding within an acceptable time frame.

To obtain the desired reduction in fishing mortality for the overfished species of grouper, a 20-inch total length minimum size limit in conjunction with a five fish recreational bag limit and a 9.2 million pound commercial quota was selected. Although some groupers undoubtedly mature at a smaller size, more than one-half of the red grouper are mature at 20 inches. Red grouper, the dominant species in the landings, was used as an index for the shallow-water grouper complex because of the scarcity of information on the other species.

The 20-inch size limit will substantially reduce growth overfishing and mortality on juvenile groupers and, coupled with the 10 to 20 percent reduction in harvest resulting from the bag limit and quota, should be sufficient to commence rebuilding the spawning stock. Although Florida currently has an 18-inch size limit, the state is expected to adopt the more restrictive limit of 20 inches that is imposed in the exclusive economic zone (EEZ). The data base for reef fish in the Gulf of Mexico is likely as valid as that for other multispecies fisheries currently under management and constitutes the best information available. Deferring the establishment of quotas until an improved data base is secured could result in irreversible damage to the grouper resources

contrary to the national standards of the Magnuson Act.

NOAA believes that the size limits, quotas, and bag limits are based upon the best scientific information available, and are necessary to conserve the grouper spawning stock. In addition, there is an annual procedure within Amendment 1 that allows management adjustments to be made, based on new information, without amendment of the FMP.

#### Annual Management Adjustments

**Comment:** A commercial fishing organization expressed concern over the use of notice actions to make annual adjustments to bag limits, size limits, trip limits, seasonal and areal closures, and gear restrictions. Such changes may have significant impacts on resource users and should be subjected to a thorough review.

**Response:** NOAA acknowledges that adjustments to bag limits, size limits, trip limits, seasonal and areal closures, and gear restrictions can significantly impact users of the resource. However, the procedure does not diminish the responsibility of managers to identify and consider the impacts associated with implementing or modifying these types of management measures. Further, there is ample opportunity for public review. Prior to the implementation of the above actions, and the specification of TAC levels each year, the Council must prepare a regulatory impact review and, if necessary, a regulatory flexibility analysis to analyze fully the potential impacts of the proposed changes, a proposed rule must be published, followed by a period for public comment and publication of a final rule. Public hearings may be held. Other analyses, as appropriate, describing the associated impacts must be prepared; at a minimum these include an environmental assessment. Ultimately, the NMFS Southeast Regional Director decides whether to approve the adjustments recommended by the Council. The procedure, therefore, will allow for thorough review of all factors relevant to the decision making process. NOAA believes the ability to implement or adjust these types of measures under the outlined procedure will prove invaluable to timely, effective, and fair management of reef fish resources in future years.

#### Jewfish Restrictions

**Comment:** A state marine fisheries commission, the U.S. Fish and Wildlife Service, several fishermen, and two scientists expressed concern over the status of jewfish resources. Because jewfish are not a common species, there

is only limited information on their growth, mortality, and reproductive biology. It is known, however, that because of the amount of time required to reach maturity, jewfish are highly susceptible to recruitment overfishing and would not be expected to recover quickly from a stock collapse. Commentors agreed that the 50-inch minimum size limit proposed for Federal waters will afford some protection, but indicated a total prohibition on harvest is necessary to reverse the damage from overfishing that has already occurred. Florida has proposed a ban on the harvest and sale of jewfish, and the Florida Marine Fisheries Commission has requested that the Secretary approve the proposed size limit restriction but reserve its implementation pending Council action on Amendment 2 to the FMP which proposes to ban the harvest of jewfish in the EEZ. The state believes that jewfish would be better protected by the state ban because over 90 percent of the Gulf-wide landings occur in Florida.

**Response:** NOAA believes the 50-inch minimum size limit should be implemented without delay. NOAA agrees that long-lived, slow maturing species, such as jewfish, need considerable protection to guard against overfishing. The 50-inch size limit will afford protection to jewfish by allowing them to reach maturity prior to harvest. Deferred implementation of the Federal size limit would leave jewfish totally unprotected off states other than Florida, even though collectively those four states account for only 10 percent of the landings. Also, Florida's restrictions on the harvest and sale of jewfish are only in the form of a proposed rule that could conceivably be delayed or possibly not implemented. In the absence of the 50-inch minimum size limit, jewfish would be completely unregulated in Federal waters. On November 29, 1989, the Council adopted Amendment 2 which proposes to increase protection in Federal waters by banning the harvest and possession of jewfish harvested in the EEZ. The Council has not yet submitted the amendment for Secretarial review. If approved and implemented by the Secretary, this measure would address the concerns of all the commentors.

#### Gear Restrictions

**Comment:** Members of a commercial fishing organization and a minority report opposed the prohibition of entanglement nets in a directed fishery for reef fish. They stated that entanglement nets harvest only about one percent of the reef fish resource, and



it has not been documented that entanglement nets have a significant or detrimental catch of other marine resources. The commentators stressed that a small traditional industry, based primarily in the Florida Keys, relies on entanglement nets for its livelihood and therefore would be adversely impacted.

**Response:** NOAA supports the Council's proposal to prohibit the use of entangling nets for the directed harvest of reef fish. Rationale for the prohibition is essentially the same as that supporting the prohibition of drift gillnets from the overfished fisheries for Gulf migratory group king mackerel and Gulf and Atlantic groups of Spanish Mackerel. NOAA felt that it would be unfair to allow the introduction of drift gillnets into those mackerel fisheries, since the existing users of traditional gear could already meet the restrictive quotas imposed in response to overfishing.

The use of entanglement nets for the directed harvest of reef fish in Federal waters is limited and does not constitute a well-established fishery. The proposal would allow retention of bycatch of reef fish up to the recreational bag limits by entanglement net fishermen targeting other species.

The overfishing of certain reef fish in the EEZ necessitates restrictive quotas, size, and bag limits to protect and rebuild those stocks. The reef fish fishing industry using other well-established gears in Federal waters is already economically stressed by such restrictions and capable of harvesting the entire quota. NOAA therefore believes that it is necessary and appropriate to decrease competition for these limited resources by disallowing a new type of gear in the fishery.

**Comment:** A minority report, a commercial fishing organization, and a large number of commercial fishermen objected to the Council's proposals that trawl vessels must comply with the reef fish size and bag limits established for the recreational fishery. The comments emphasized the large potential for harvesting by trawl "underutilized" resources, such as wenchman snapper, that are controlled by bag limits.

**Response:** The measure extending the application of size limits and bag limits to vessels with trawl gear aboard is the only effective means of ensuring that these vessels do not engage in a directed fishery for reef fish. Encouraging a directed trawl fishery for reef fish would present a burden to other users competing for already limited resources.

Exempting trawl vessels from the bag limit would allow a directed fishery for wenchman snapper and other "underutilized" reef fishes to develop.

This would result in a substantial bycatch of red snapper or other overfished species in the management unit. An allowance for catches in excess of the bag limits would result in an unacceptable level of mortality to species under management.

However, for the reasons set forth in the response to the following comment, the final rule does not impose bag or size limits on the unsorted catch of vessels in the groundfish trawl fishery. The application of this exception to only the unsorted catch of reef fish by the few vessels in the groundfish trawl fishery will preclude any surreptitious targeting of reef fish by these vessels.

**Comment:** There were numerous objections to the requirement that permitted trawl vessels be forced to return to port to remove their trawls before fishing under the commercial quota. The minority report proposed that trawl vessels with commercial reef fish permits be allowed to target and harvest reef fish with any legal gear. Return trips to port to remove trawl gear from such vessels would not be necessary, thereby increasing efficiency and avoiding potential violations of the Council's proposal.

**Response:** An operator of a trawler desiring to fish for reef fish under the commercial quota with other gear will be required to unload all trawl gear prior to engaging in a directed effort for reef fish. This will require deciding in advance of departure which fishery will be prosecuted. Adoption of the minority report proposal would result in significant bycatch of overfished species of reef fish, and result in an unenforceable situation whereby large numbers of reef fish could be harvested by trawl gear. This would undermine the objective of rebuilding the overfished reef fish stocks. The long-term benefits derived from rebuilding of the reef fish stocks would more than offset the inconveniences and adverse economic impacts on the trawl fishermen.

**Comments:** The minority report and other objectors also suggested that the possession and sale of undersized reef fish for groundfish trawl vessels be allowed, which would then eliminate the burden of separating undersized reef fish from the catch. The report noted that this proposal would benefit the vessels where measurement of the catch is most difficult, without increasing fishing mortality or directed harvest of reef fish. The minority report also proposed that commercial trawl vessels be exempt from the established size limits provided the total weight of undersized fish does not exceed one percent of all fish (or invertebrates) aboard.

**Response:** There are basically two trawl fisheries in the Gulf of Mexico, shrimp and groundfish. Shrimp trawlers typically sort their catch at sea, utilize hold capacity for the more valuable shrimp, and discard other species. Marketable-sized reef fish may also be retained. Unlike the shrimp trawlers, trawlers in the groundfish fishery (currently seven) typically take many small fish, do not sort their catch at sea, and ultimately sort out only those large fish that are unsuitable for processing by grinding up for pet food and industrial products. The Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) for Amendment 1 analyzes the impacts of the rules requiring adherence to the size and bag limits and prohibiting the sale of reef fish caught under the bag limits, as they apply to the sorted catch, in both the shrimp and groundfish fisheries. The RIR/IRFA does not analyze the impact of such requirement and prohibition on the unsorted catch that is typical in the groundfish trawl fishery. Without such analysis, the Amendment fails to demonstrate compliance with E.O. 12291 and the Regulatory Flexibility Act as to the groundfish trawl fishery. Because the impacts of requiring sorting of all catch in the groundfish trawl fishery have not been analyzed, NOAA is disapproving the application to the unsorted catch of reef fish in the groundfish trawl fishery of the bag and size limits and the permit requirement for sale of such unsorted catch. As a result of these disapprovals, the bag limits and prohibition of sale that may be implemented by a commercial closure (§ 641.26) will not apply to the unsorted catch of reef fish in the groundfish trawl fishery. Any sorted catch of reef fish must comply with the harvest limitations, including minimum sizes, and the bag and possession limits, including prohibition on sale.

To monitor the impact of the disapproved measures and to aid in enforcement, NOAA may initiate a regulatory amendment to require the owner or operator of each vessel in the groundfish trawl fishery to obtain annually a letter from the Regional Director authorizing participation in that fishery.

With the exception noted above, NOAA agrees with the Council that vessels with trawl gear aboard must comply with the minimum size limits.

**Comment:** Another commercial fisherman stated that hook-and-line fishing on trawlers is less efficient than longlines or other types of gear, and therefore should be exempt from the annual quotas on commercial fishing.



*Response:* NOAA disagrees. Hook-and-line fishing on trawlers is a source of fishing mortality and catches by that fishing mode should be included in the annual quotas.

#### Area Restrictions

*Comments:* Two of the minority reports and many commercial fishermen, including members of a commercial fishing organization, objected to the Council's proposal to extend the current stressed area boundary out to the 30-fathom isobath along the entire coastline of Texas, and out to the 10-fathom isobath along the entire coastline of Louisiana. The commentors also objected to the prohibition on fish traps, roller trawls and powerheads, noting that such gear are not commonly used in the extended stressed area and therefore are not significantly contributing to overfishing. They felt that gear prohibitions should apply to those gear that are inflicting the bulk of the fishing mortality. Several of the commentors noted that extension of the present boundary would create a larger burden on both administrative and law enforcement personnel, and would pose problems for the smaller vessels that have to travel large distances to fish outside the stressed area. The two minority reports criticized the extended stressed area based on the following specific objections to each of the six criteria:

(1) Although red snapper is overfished, the extended stressed boundary is arbitrary and therefore will not prevent overfishing of red snapper or other reef fish species;

(2) The area off Texas includes the entire recreational and most of the commercial fishing pressure; however, the gear prohibitions do not include commonly used gear and therefore will not reduce fishing mortality in those or other areas;

(3) There are no cities of high population on the Louisiana coast due to its marsh shoreline; the only such city on the Texas coast is Houston/Galveston, which already has an established stressed area;

(4) Coastal access is limited off both Louisiana and Texas because much of the coastline is undeveloped;

(5) Historical fishing practices in the extended stressed area do not include the prohibited gear; exclusion of such gear therefore is not appropriate; and

(6) The stressed area should not be extended, since there is no special habitat within the extended area that needs protection.

*Response:* The stressed area was the principal means by which the FMP addressed overfishing a nearshore

waters. Once delineated, use patterns and nearshore resource problems were noted and management measures established for the stressed area to reduce fishing effort equitably to help alleviate overfishing. The FMP outlined factors which were important to the identification of the stressed area. Areas, however, were judged for inclusion based on overall area characteristics, not because all factors were present to justify the inclusion of each area.

NOAA supports the extension of the stressed area off Texas and Louisiana. Both Texas and Louisiana have population centers on or near the coast similar in size and number to other areas where the stressed areas have been established. Coastal development in Texas and Louisiana since the FMP was implemented has increased the potential for public access to the extended area. Red snapper, which is severely overfished, is the principal reef fish species in these areas and is subject to intense pressure. Extension of the stressed area is, therefore, appropriate.

Power heads, roller trawls, and fish traps are not now commonly used in the extended stressed area. Prohibition of these gears will affect an almost non-existent or very small group presently utilizing that gear in the EEZ. Such a prohibition will further two management objectives of the FMP: to minimize conflicts between user groups of the resource and conflicts for space; and, to conserve reef fish habitats and increase reef fish resources. Any negative socioeconomic impacts on the small number of users of the prohibited gear will be outweighed by increased catch per unit of effort and higher recreational satisfaction or similar benefits to the other user groups.

*Comment:* The commercial fishing organization and one of the minority reports also objected to the Council's rejection of management measures 1 and 3, which would have reduced the current stressed areas boundaries off west Florida and southwest Florida, respectively. The commentors indicated that the current boundaries include areas of very low human population and fishing pressure. They maintained that those regions do not meet the criteria used in delineating the boundaries, and were therefore proposed for removal from the stressed area. They also noted that the current boundaries had created problems with law enforcement and higher production costs.

Area fishery resources were also described, including a sea bass fishery within the boundary addressed by rejected measure 1. They indicated that development of this "underutilized"

fishery had been unduly restricted by the current boundary and regulations of traps, and would not interfere with shrimping operations.

*Response:* Both measures would allow an increase in fishing mortality on nearshore reef fishes in those areas, which serve as nurseries for juvenile fishes. For example, rejected measure 3 would open an area easily accessible from Key West and the Pinellas County region, both of which have large populations of grouper fishermen. Rejected measure 1 would have allowed expansion of the sea bass fishery in the west Florida region. The long-term effects of increased fishing mortality on the sea bass resources resulting from the expanded fishery is unknown. Based upon these concerns, NOAA supports the Council's rejection of measures 1 and 3.

*Comment:* Some fishermen indicated that prohibiting longline fishing for reef fish within the 20-fathom contour east of Cape San Blas, Florida, would exclude them from the most productive bottom for red grouper—the backbone of the grouper fishery.

In addition to the prohibition being economically damaging, a commercial fishing organization also indicated that the area restriction on longlines and buoy gear was originally directed towards the protection of the red snapper spawning stock in the western Gulf and was not intended to reduce the harvest of large spawning grouper, since grouper have a different reproductive biology. The organization further indicated that grouper fishing mortality by other gear exceeds that resulting from longlines, yet these other fishing modes are not prohibited inside 20 fathoms.

Other fishermen indicated that the 50-fathom area restrictions west of Cape San Blas would cause economic hardship.

*Response:* The prohibition of longline and buoy gear in a directed fishery for reef fish inside of the 20-fathom contour east of Cape San Blas is expected to cause little disruption to the Florida grouper fishery as less than 10 percent of the red grouper catch occurs in this area. The intent of this restriction is to reduce the catch and subsequent release mortality of groupers under 20 inches that are abundant inside of 20 fathoms. Since most of the larger groupers are males, there is less concern over the use of longline and buoy gear taking the larger fish. NOAA believes that affording protection for the smaller females while regulating the overall harvest of larger fish (mostly males)



through quotas is a prudent management strategy.

Longline and buoy gear are prohibited inside the 50-fathom contour in the western Gulf to protect the red snapper resource. The western area generally covers the range of red snapper as few occur east of Cape San Blas or offshore of the 50-fathom contour. The restriction is designed to reduce the impact of these gears that typically have harvested large red snapper from the spawning stock from non-reef areas where catch per unit effort by more traditional gear is too low to fish economically. Since fecundity of red snapper increases with size, it is important to reduce harvest of large individuals. Although other gear have historically taken a greater share of the grouper resources, it should be mentioned that longlines are a recent introduction into the fishery. Therefore, NOAA concurs with the establishment of the longline and buoy gear restricted areas.

#### Use of Reef Fish as Bait

*Comment:* A number full-time commercial fishermen who use fish head as bait for stone crabs, and a commercial fishing organization, commented on the requirement that all reef fish be landed with head and fins intact. The fishermen felt that misinterpretation of the proposed rule by law enforcement agents could cause lost fishing time and therefore result in negative economic impacts on the stone crab fishery. The organization felt that the requirement would prevent the consumption of catch by fishermen on board their vessels; the organization proposed to exempt from the requirement the preparation of fish for immediate consumption while on board.

*Response:* The regulations implementing the FMP require red snappers to be landed with head and fins intact in order to provide whole specimens from selected fishermen and dealers for dockside inspection by authorized statistical reporting agents, and to ensure adherence to the minimum size limit. Amendment 1 will extend the requirement to all other reef fish for which minimum size limits are instituted. The regulations are not intended to preclude consumption aboard a vessel of legal-sized reef fish taken under bag limits.

After landing, possession of reef fish heads alone would not constitute a violation. As added protection and to expedite enforcement, fishermen should carry a receipt to document the purchase of the fish heads.

#### Amberjack Regulations

*Comment:* Several commercial fishermen commented on the proposed establishment of commercial size limits and recreational size and bag limits for greater amberjack.

One commentator objected to the proposed 36-inch fork length commercial size limit, which he felt was not warranted by the existing data base. He also noted that greater amberjack harvesting would already be reduced by the other measures in the amendment, since recreational fishermen would no longer be able to sell their catch and therefore would not target the species. Based on these concerns, the commentator suggested that both the commercial size limit and the recreational size be changed to 28 inches fork length.

Another commercial fisherman stated that the increase in landings was not typical of overfishing. The commentator also supported the 28-inch recreational size limit but indicated that the limited data base did not warrant the proposed recreational bag limit.

In addition, the commentator objected to the classification of greater amberjack as reef fish, since he believed that the species are instead mid-water fish that utilize reefs primarily for feeding.

*Response:* The comments regarding a limited data base are best addressed by national standard 2, which dictates that conservation and management measures be based on the best scientific information available, even though those data may be limited. Overfishing of greater amberjacks is possible but may not be accurately shown by the currently limited stock assessment data. Current rates of both recreational and commercial fishing are increasing. For example, data recently made available for January, 1988, indicate that commercial effort and landings have more than doubled compared to data for recent years. This rate of fishing mortality could result in overfishing of the species, if that has not already occurred. As other reef fish stocks decline or as quotas are met, anglers will target alternative species, such as greater amberjack, to compensate for reduced catches. This increased effort may equal or exceed the elimination of fishing mortality by those recreational fishermen who were previously harvesting greater amberjack for sale. Overfishing may therefore still occur despite the elimination of these fishermen from the fishery.

Recreational catches, primarily from charter and party boats in Florida and Louisiana, has fluctuated between 97 and 66 percent of the total harvest

between 1979 and 1987. These data indicate that fishing mortality may be significantly reduced by restrictions on that mode.

The proposed bag limit on greater amberjack would result in approximately a 45 percent reduction in recreational catch, based on the 1985-87 average recreational catch, thus significantly reducing fishing mortality. A larger bag limit would result in a much lower reduction in mortality.

NOAA believes that the combination of the proposed regulations for both recreational and commercial fishermen should help stocks return to the 20 percent SSBR goal established in the amendment, if overfishing now exists. If this species is not yet overfished, the regulations represent an effective conservation strategy to prevent the stock from falling below the 20 percent SSBR goal.

In response to the comment on the classification of greater amberjack as a reef fish, the available scientific data indicates that this species inhabits reef areas. Its inclusion in the reef fish management unit therefore is in order.

#### Income Requirements

*Comment:* Several part-time and full-time commercial fishermen objected to the Council's proposal that more than fifty percent of an individual's (owner or operator) earned income must be derived from commercial, charter, or headboat fishing to qualify for an annual fishing permit.

Some commentators stated that the regulation would remove part-time fishermen from the fishery and therefore would reduce depletion of reef fish stocks. However, several fishermen also noted that closures of the fishery when the proposed quotas are met may force full-time fishermen to obtain supplemental income. Such fishermen then would be forced from the fishery by such quotas, if less than fifty percent of their annual income were derived from fishing.

One commentator objected to the exclusion of unearned income from the Council's proposal. He correctly pointed out that large numbers of persons who live on pensions or other income classified as unearned could qualify by earning a small income from their fishing activities.

*Response:* The 50 percent threshold was proposed by the Council to differentiate fishermen whose primary income is earned from fishing and therefore depend on the fishery for their livelihood, and to distribute reductions in fishing effort necessary to rebuild overfished reef fish stocks. The catch



and associated revenue now benefitting the recreational and part-time commercial fishers would be redistributed to commercial fishermen who qualify for a permit.

Overfishing of certain reef fish species has necessitated restrictive quotas that have stressed the commercial fishing industry. As more reef fish species become overfished, additional quotas will be necessary. As noted in the RIR/IRFA, the income requirement will remove part-time fishermen from the fishery and therefore lessen the impact of these restrictions on those who rely on fishing for their primary income.

The proposed regulations impose quotas rather than a fixed fishing season. Therefore, it is possible that some or all of the quotas will not be reached and that some parts of the fishery will remain open throughout the year. Once quotas are reached, there are no restrictions against shifting to other fisheries to meet the earned income qualifications. Therefore, access to the fishery remains open, but competition over quotas by part-time fishermen is reduced, thereby distributing the benefits to those dependent upon the fishery for their livelihood.

The proposal does not unduly burden those who depend on the fishery for their primary livelihood, does not limit access to certain gear types, and is a fair and equitable solution to overfishing of certain reef fish stocks by recreational fishermen. Recreational fishermen who would no longer be able to fish under the commercial quota or sell their catch may be inconvenienced. NOAA believes that the Council's proposal will help protect and rebuild overfished reef fish stocks and also reduce economic impacts on the already stressed commercial fishery, factors which far outweigh any such inconveniences on the recreational sector.

*Comment:* Several commentors noted that the inefficiency of their gear prevented them from meeting the 51 percent income requirement. One such person supplemented his income from other sources with hook-and-line income during times of high demand for fish, and suggested that either 25 percent of \$5,000 of an individual's (owner or operator) earned income must be derived from commercial, charter, or headboat fishing to qualify for a permit. Recreational fishermen would then be removed from the commercial fishery, while allowing small commercial fishing operations to stay in business.

*Response:* This approach would allow part-time fishermen to obtain permits and enter the fishery. In addition, a person earning \$50,000 could qualify if over \$5,000 of that income was derived

from fishing. Use of a lump sum, therefore, would provide permits to part-time fishermen and thereby defeat the intent of the Council's proposal.

#### Economic Benefits

*Comment:* Another issue discussed by a commentor was the specific management objective of Amendment 1 to maximize net economic benefits from the reef fish fishery. An economist from a state university requested a definition of "net economic benefits" as it applies to optimum yield. The comments also noted that Amendment 1 mentions net economic benefits as an objective, but then does not provide clear data on the monetary difference between maximum net economic benefits and current net economic benefits.

*Response:* The Magnuson Act includes economic considerations within the definition of optimum yield. Congress did not further define economic considerations in the Act; therefore, the relevant economic considerations when discussing optimum yield are determined by fishery managers and should be contained in appropriate regulatory impact reviews. According to NMFS guidelines for the preparation of regulatory impact reviews, net economic benefits are defined as the sum of producer and consumer surplus associated with commercial and recreational fishery effort.

Furthermore, data do not currently exist that can provide a quantitative answer as to the monetary difference between current net economic benefits and maximum net economic benefits. However, the amendment clearly indicates that current yield is well below optimum yield.

#### Vessel and Crew Safety

*Comment:* Two minority reports and many commercial fishermen, including members of a commercial fishing organization, cited vessel safety as part of their objections to some of the management measures approved by the Council, including stressed area boundaries, gear restrictions, quotas, size limits, and restricted areas for buoys and longlines.

Several commentors noted that these measures may pose safety problems for the smaller vessels that have to travel large distances to legal fishing areas. One commentor noted that trips of up to five hours may be required to travel to and from the new longline area.

Some commentors noted that longer travel times also would be needed to meet the quota and size limit restrictions, resulting in dangerous conditions for fishermen during bad weather. They suggested that vessel safety problems

may also result from the additional time at sea required by Federal personnel to enforce the new regulations.

*Response:* The management measures approved by the Council do not establish a fixed period of time for fishing, regardless of climatic conditions. Fishermen are able to fish during good weather when vessel safety is maximized. The increased risk to vessels associated with travel to the new fishing areas is product of the potential dangers inherent in travel at sea. In order to increase vessel and crew safety, accurate weather forecasts are available for utilization by both fishermen and law enforcement personnel.

To avoid life-threatening conditions, fishermen should postpone travel during unsafe or marginal weather, and resume fishing during good weather until the quotas are met.

#### Charter Vessel and Headboat Requirements

*Comment:* One of the minority reports objected to the Council's proposal that both charter vessels and headboats with permits to fish under the commercial quota be required to fish under the bag limit when under charter or when there are more than three persons aboard, including captain and crew. The minority report proposed instead that such boats be required to fish under the bag limit when under charter or when there are more than five persons aboard, including captain and crew.

The minority report noted that charter vessels and headboats typically target reef fish commercially when business is slow. The report stated that up to five persons are needed to fish commercially on such boats, especially when using bottom rigs. Based on the Council's proposal, a charter vessel or headboat not under charter but with four or five persons aboard would therefore be unduly restricted to the bag limit, and would not be able to fish commercially. The report also stated that four or five persons on such boats may be needed to man lines for bottom fishing.

Further, the report stated that the Council based its proposal on the requirements for mackerel charter vessels and headboats as contained in the Coastal Migratory Pelagics FMP, which typically do not use multiple troll lines while fishing commercially.

*Response:* NOAA supports the Council's proposal, and believes that charter vessels and headboats with permits to fish under the commercial quota should be required to fish under the bag limit when under charter or when there are more than three persons



aboard, including captain and crew. Data available from NOAA surveys of charter vessels and headboats indicate that most such boats do not typically use over three persons on board to fish commercially for reef fish. Based on this information, economic impacts associated with this rule will be limited to a few charter vessels and headboats that would not be able to utilize their permits to fish under the commercial quota. Furthermore, the rule will allow effective enforcement of recreational bag limits consistent with legitimate use of commercial permits for the large majority of vessels affected by this rule.

The minority report proposal might encourage boats under charter with five persons total on board to harvest excess amounts of reef fish by claiming to be fishing commercially. NOAA believes that the ensuing difficulties and losses to enforcement of conservation and allocative measures would far outweigh any benefits to be derived from a rule which would accommodate legitimate commercial fishing by these few boats when not under charter.

The net effect of the Council's proposal is a reduction of fishing mortality by charter vessels and headboats, thus contributing to necessary conservation of the overfished reef fish resources. This benefit justifies the economic impacts on the few such vessels that are adversely affected by the Council's proposal.

#### Changes from the Proposed Rule

In § 641.4(c), the fees charged for each permit and for each fish trap identification tag are specified as \$23 and \$1, respectively. These amounts were included in the preamble to the proposed rule as the initial fees to be charged but were not specified in the codified section. An earlier, preliminary analysis of the administrative costs of issuing permits and tags had indicated fees of \$17 and \$1. Those amounts were included in the RIR/IRFA which accompanied Amendment 1. A more detailed analysis of the direct and indirect administrative costs of issuing permits and tags, including current information on Department of Commerce and NOAA overhead and other costs, rounded to whole dollar amounts, resulted in the current fees of \$23 and \$1. Any revision of these fees necessitated by a significant change in the administrative costs will be made by appropriate amendment to § 641.4(c).

The heading of § 641.6 is revised by adding the word "structure" to identify more clearly the requirements for identification contained in that section.

The prohibitions of §§ 641.7(f) and 641.21(d) on purchase or sale of reef fish

smaller than the minimum sizes is removed as unnecessarily duplicative. The possession of reef fish smaller than the minimum sizes is prohibited by the regulations in this part, and purchase or sale of any fish taken or retained in violation of any regulations issued under the Magnuson Act is prohibited by the general prohibitions in § 620.7.

In §§ 641.24(b) and 641.25, the bag limit and commercial quotas of "All others—unlimited" are removed. "Unlimited" does not constitute a bag limit or a quota and it is unnecessary to include a rule to indicate that harvest restrictions are not established for other species.

Section 641.27 of the proposed rule included the statement from Amendment 1 of the long-term optimum yield of the reef fish fishery and contained procedures from Amendment 1 for setting TAC and adjusting management measures annually by regulation. The optimum yield and TAC procedures would apply to the Council and NMFS but are not regulatory in nature because they do not control the behavior of fishermen. Accordingly, NOAA has concluded that regulatory language is not necessary to implement the procedures for adjusting optimum yield, TAC, or size limits, quotas, or other management measures. NOAA chose to publish the optimum yield and TAC procedures in the proposed rule as the most effective means of notifying interested persons and obtaining public comments. Accordingly, the statement of long-term optimum yield and the TAC procedures for setting total allowable catch and adjusting management measures annually, contained in Amendment 1, are approved but need have no regulations to implement those procedures. Consequently, § 641.27, as published in the proposed rule, is not included in this final rule.

As discussed above, NOAA is disapproving the application to the unsported catch of reef fish in the groundfish trawl fishing of (1) the bag and size limits, (2) the permit requirement for sale of reef fish, and (3) the commercial closure provisions. Accordingly, a definition of *groundfish trawl fishery* is added to § 641.2 and exemptions for the groundfish trawl fishery are added at § 641.27.

#### Approval of Amendment 1

NOAA concurs with the problems in the reef fish fishery and the management objectives as stated in Amendment 1. NOAA finds that the management measures of Amendment 1 address the problems and may achieve the objectives, and, accordingly, with the limited exception noted above

regarding the groundfish trawl fishery, NOAA approves Amendment 1.

#### Effective Dates

The new vessel, structure, and gear identification requirements (§ 641.6) and bag and possession limits (§ 641.24) implemented by this rule depend, for application and enforcement, upon a categorization of reef fish fishermen in accordance with permitting requirements. Accordingly, the permit requirements (§ 641.4) are effective January 22, 1990, and §§ 641.6 and 641.24 (and their corresponding prohibitions in § 641.7) will be effective April 22, 1990. The delayed effectiveness of §§ 641.6 and 641.24 will allow sufficient time for owners and operators in the fishery to obtain and submit applications and for NMFS to process and issue permits. All other changes in this rule will be effective February 21, 1990.

This rule contains alternative minimum size limits for amberjack (§ 641.21(a)(6)) that depend on whether the person catching the amberjack is subject to the bag limits. Since the bag limit provisions will not be effective until April 22, 1990, the smaller of the alternative size limits (28 inches fork length) will apply to all harvests of amberjack from February 21, 1990 until April 22, 1990. Effective April 22, 1990, the 28-inch minimum size limit will apply to a person subject to the bag limit and a 36-inch (fork length) size limit will apply to a person not subject to the bag limit.

The prohibitions of the current rule that deal with the requirement to have a permit to fish with a fish trap and with the requirements for gear, vessel, and structure identification (§ 641.7(a) and (b)) will remain in effect until April 22, 1990.

The delayed effectiveness of portions of this rule notwithstanding, the commercial quotas established in § 641.25 will apply to the fishing year commencing on January 1, 1990.

#### Classification

The Secretary of Commerce determined that Amendment 1 is necessary for the conservation and management of the reef fish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local



government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule. Based on the RIR/IRFA, which described the effects the rule would have on small business entities, the Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) concluded that the proposed rule, if adopted, will have significant economic effects on a substantial number of small entities. A summary of the economic effects was included in the proposed rule published at 54 FR 41297, October 6, 1989, and is not repeated here.

NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) which addresses the need for the objectives of the final rule, summarizes public comments and responses thereto, explains changes to the proposed rule made by the final rule, and refers to discussion of proposed and alternative management measures designed to minimize significant economic impacts on small entities.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not have an approved coastal zone management program. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. None of the states commented within the statutory time period, and, therefore, consistency is automatically implied.

The Council prepared an environmental assessment (EA) for Amendment 1 and, based on the EA, the Assistant Administrator concluded that there will be no significant adverse impact on the human environment as a result of this rule.

This rule contains two new collection-of-information requirements and revises two existing requirements subject to the Paperwork Reduction Act. These collections of information have been approved by the Office of Management and Budget, and the following OMB Control Numbers apply: permit requirement (revised) OMB #0648-0205; headboat requirement (revised) OMB #0648-0016; charter boat logbook requirement (new) OMB #0648-0233;

and commercial boat logbook (new) OMB #0648-0234.

A comment received from a state agency during the public comment period regarding implementation of Amendment 1's size limit for jewfish implicated federalism principles to an extent that was sufficient to warrant preparation of a federalism assessment under E.O. 12612 to address that measure. A federalism assessment was prepared which concluded that implementation of the measure was consistent with the principles, criteria, and requirements of E.O. 12612.

The Assistant Administrator, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d)(3), finds for good cause, namely, to provide for timely and effective implementation of necessary conservation measures, that it is not necessary to delay for 30 days the effective date of § 641.4 of this rule.

#### List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 17, 1990.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 641 is amended as follows:

#### PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for Part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Effective February 21, 1990, in § 641.1, paragraph (b) is revised to read as follows:

##### § 641.1 Purpose and scope.

(b) This part governs conservation and management of reef fish in the EEZ of the Gulf of Mexico, except that §§ 641.5 and 641.25 also apply to fish from adjoining State waters.

3. Effective February 21, 1990, in § 641.2, the definition for *Management area* is removed; Figures 1 and 2 are redesignated as Appendix A, Figures 1 and 2; in the definition for *Fork length*, the parenthetical phrase "(See Appendix A, Figure 1.)" is added after the period; in the definition for *Powerhead*, the word "which" is revised to read "that"; in the definition for *Statistical area*, the phrase "Appendix A," is added before the word "Figure"; in the definition for *Total length*, the word "when" is added before the word "depressed" and the parenthetical phrase at the end of the definition is revised to read "(See Appendix A, Figure 1.)"; the definitions

for *Charter vessel*, *headboat*, *reef fish*, and *Roller trawl* are revised; and new definitions for *Buoy gear*, *Groundfish trawl fishery*, and *Trip* are added in alphabetical order to read as follows:

##### § 641.2 Definitions.

*Buoy gear* means fishing gear consisting of a float and one or more weighted lines suspended therefrom, generally long enough to reach the bottom, on which there is a hook or hooks (usually 6 to 10) at or near the end, which is allowed to drift freely with periodic retrieval to remove catch and rebait hooks.

*Charter vessel* means a vessel whose operator is licensed by the U.S. Coast Guard to carry six or fewer paying passengers and whose passengers fish for a fee. A charter vessel with a permit to fish on a commercial quota for reef fish is under charter when it carries a passenger who fishes for a fee, or when there are more than three persons aboard including operator and crew.

*Groundfish trawl fishery* means fishing by a vessel that uses a bottom trawl, the unsorted catch of which is ground up for animal feed or industrial products.

*Headboat* means a vessel whose operator is licensed by the U.S. Coast Guard to carry seven or more paying passengers and whose passengers fish for a fee. A headboat with a permit to fish on a commercial quota for reef fish is operating as a headboat when it carries a passenger who fishes for a fee, or when there are more than three persons aboard including operator and crew.

*Reef fish* refers to fish in the following two categories:

(a) *Management unit*. Species taken in the directed fishery include the following:

##### Snappers—Lutjanidae Family

Queen snapper, *Etelis oculatus*  
Mutton snapper, *Lutjanus analis*  
Schoolmaster, *Lutjanus apodus*  
Blackfin snapper, *Lutjanus buccanella*  
Red snapper, *Lutjanus campechanus*  
Cubera snapper, *Lutjanus cyanopterus*  
Gray (mangrove) snapper, *Lutjanus griseus*  
Dog snapper, *Lutjanus jocu*  
Mahogany snapper, *Lutjanus mahogoni*  
Lane snapper, *Lutjanus synagris*  
Silk snapper, *Lutjanus vivanus*  
Yellowtail snapper, *Ocyurus chrysurus*  
Wenchman, *Pristipomoides aquilonaris*  
Vermilion snapper, *Rhomboplites aurorubens*



**Groupers—Serranidae Family**

Rock hind, *Epinephelus adscensionis*  
 Speckled hind, *Epinephelus drummondhayi*  
 Yellowedge grouper, *Epinephelus flavolimbatus*  
 Red hind, *Epinephelus guttatus*  
 Jewfish, *Epinephelus itajara*  
 Red grouper, *Epinephelus morio*  
 Misty grouper, *Epinephelus mystacinus*  
 Warsaw grouper, *Epinephelus nigritus*  
 Snowy grouper, *Epinephelus niveatus*  
 Nassau grouper, *Epinephelus striatus*  
 Black grouper, *Mycteroperca bonaci*  
 Yellowmouth grouper, *Mycteroperca interstitialis*  
 Gag, *Mycteroperca microlepis*  
 Scamp, *Mycteroperca phenax*  
 Yellowfin grouper, *Mycteroperca venenosa*

**Sea Basses—Serranidae Family**

Bank sea bass, *Centropristis ocyurus*  
 Rock sea bass, *Centropristis philadelphica*  
 Black sea bass, *Centropristis striata*

**Tilefishes—Malacanthidae Family**

Goldface tilefish, *Caulolatilus chrysops*  
 Blackline tilefish, *Caulolatilus cyanops*  
 Anchor tilefish, *Caulolatilus intermedius*  
 Blue line tilefish, *Caulolatilus microps*  
 Tilefish, *Lopholatilus chamaeleonticeps*

**Jacks—Carangidae Family**

Greater amberjack, *Seriola dumerili*  
 Lesser amberjack, *Seriola fasciata*

**Grunts—Haemulidae Family**

White grunt, *Haemulon plumieri*

**Porgies—Sparidae Family**

Red porgy, *Pagrus pagrus*

**Triggerfishes—Balistidae Family**

Gray triggerfish, *Balistes caprisus*

(b) *Fishery.* Species taken incidental to the directed fishery include the following:

**Wrasses—Labridae Family**

Hogfish, *Lachnolaimus maximus*

**Grunts—Haemulidae Family**

Tomtate, *Haemulon aurolineatum*  
 Pigfish, *Orthopristis chrysoptera*

**Porgies—Sparidae Family**

Grass porgy, *Calamus arctifrons*  
 Jolthead porgy, *Calamus bajonado*  
 Knobbed porgy, *Calamus nodosus*  
 Littlehead porgy, *Calamus proridens*  
 Pinfish, *Lagodon rhomboides*

**Sand Perches—Serranidae Family**

Dwarf sand perch, *Diplectrum bivittatum*  
 Sand perch, *Diplectrum formosum*

**Triggerfishes—Balistidae Family**

Queen triggerfish, *Balistes vetula*

*Roller trawl* means a trawl net equipped with a series of large solid rollers separated by several smaller spacer rollers on a separate cable or line (sweep) connected to the footrope, which makes it possible to fish the gear over rough bottom, i.e., in areas unsuitable for fishing conventional shrimp trawls. Rigid framed trawls adapted for shrimping over uneven bottom, in wide use along the west coast of Florida, and shrimp trawls with hollow plastic rollers for fishing on soft bottoms, are not considered roller trawls.

*Trip* means a fishing trip, regardless of number of days duration, that begins with departure from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

4. Effective January 22, 1990, § 641.4 is revised to read as follows:

**§ 641.4 Permits.**

(a) *Applicability.* (1) As a prerequisite to selling reef fish and to be eligible for exemption from the bag limits specified in § 641.24(b), an owner or operator of a vessel that fishes in the EEZ or a person who fishes in the EEZ from a structure must obtain an annual vessel permit.

(2) A qualifying owner or operator of a charter vessel or headboat may obtain a permit. However, a charter vessel or headboat must adhere to applicable bag limits when under charter or carrying a passenger who fishes for a fee.

(3) For a corporation to be eligible for a vessel permit, the statement required by paragraph (b)(2)(xi) of this section must be provided by a shareholder or officer of the corporation or the vessel operator.

(4) An owner or operator of a vessel using a fish trap in the EEZ or a person using a fish trap from a structure in the EEZ must obtain both a vessel permit and a color code from the Regional Director.

(5) A vessel permit issued upon the qualification of an operator is valid only when that person is the operator of the vessel.

(b) *Application for permit.* (1) An application for a vessel permit must be submitted and signed by the owner or operator of the vessel or by a person who fishes from a structure. The application must be submitted to the Regional Director at least 60 days prior to the date on which the applicant desires to have the permit made effective.

(2) Permit applicants must provide the following information (a person fishing from a structure may omit vessel information):

(i) Name, mailing address including zip code, and telephone number of the owner of the vessel;

(ii) Name, mailing address including zip code, and telephone number of the applicant, if other than the owner;

(iii) Social security number and date of birth of the applicant and the owner;

(iv) Name of the vessel;

(v) The vessel's official number;

(vi) Home port or principal port of landing, gross tonnage, radio call sign, and length of the vessel;

(vii) Engine horsepower and year the vessel was built;

(viii) Type of gear to be fished and other fisheries vessel is used for;

(ix) Passenger capacity and U.S. Coast Guard license number(s) of vessel operator(s) if the vessel also operates as a charter vessel or headboat during the year;

(x) Any other information concerning vessel and gear characteristics requested by the Regional Director;

(xi) A sworn statement by the applicant certifying that more than 50 percent of his or her earned income was derived from commercial, charter, or headboat fishing during the calendar year preceding the application;

(xii) Proof of certification, as required by paragraph (b)(3) of this section;

(xiii) If fish traps will be used to harvest reef fish,

(A) The number, dimensions, and estimated cubic volume of the fish traps that will be used;

(B) The applicant's desired color code for use in identifying his or her vessel and buoys; and

(C) A statement that the applicant will allow an authorized officer reasonable access to his or her property (vessel, dock, or structure) to examine fish traps for compliance with these regulations; and

(xiv) If fish traps will be used from a fixed structure,

(A) The name and number of the oil or gas structure or the most descriptive identification for other types of structures; and

(B) The location of the structure in latitude and longitude or distance and direction from a fixed point of land.

(3) The Regional Director may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(2)(xii) of this section before a permit is issued or to substantiate why such a permit should not be denied, revoked, or otherwise



sanctioned under paragraph (i) of this section.

(4) Any change in the information specified in paragraph (b) of this section must be submitted in writing to the Regional Director by the permit holder within 30 days of any such change. Failure to notify the Regional Director of any change in the required information will result in a presumption that the information is still accurate and current.

(c) *Fees.* A fee of \$23 will be charged for each permit issued under paragraph (a) of this section and a fee of \$1 will be charged for each fish trap identification tag required under § 641.6(d). The appropriate fee must accompany each permit application or request for fish trap identification tags.

(d) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to the applicant. In addition, the Regional Director will issue a numbered tag for each fish trap that is used in the EEZ and will designate a color code to be used for the identification of each vessel and fish trap buoys when such vessel and buoys are used to fish with fish traps in the EEZ.

(2) Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days, the application will be considered abandoned.

(e) *Permit condition.* Compliance with the reporting requirements of § 641.5 is a condition for the issuance, reissuance, or continuing validity of a permit issued under this section. Failure to comply with those requirements may result in the denial or sanction of a permit pursuant to subpart D of 15 CFR part 904.

(f) *Duration.* A permit remains valid for the remainder of the fishing year for which it is issued unless revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer.* A permit issued under this section is not transferable or assignable. A person purchasing a vessel with a permit to fish for reef fish must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of an executed (signed) bill of sale.

(h) *Display.* A permit issued under this section must be carried on board the fishing vessel or fixed structure, and such vessel or structure must be identified as provided for in § 641.6. The operator of a fishing vessel or person fishing fish traps from a fixed structure

must present the permit for inspection upon request of an authorized officer.

(i) *Sanctions.* Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(k) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application.

5. Effective February 21, 1990, in § 641.5, in paragraph (b), the introductory text and paragraph (b)(2) are revised, in paragraphs (b)(1) and (b)(3) through (6), the semicolons are removed and periods are added in their place, and paragraphs (b)(7) and (8) are removed; in paragraph (c), the introductory text is revised, in paragraphs (c)(1) through (4), the semicolons are removed and periods are added in their place, and in paragraph (c)(5), the semicolon and the word "and" are removed and a period is added in their place; in paragraph (d), in the introductory text, the phrase "or parts thereof" is removed where it appears in two places and the commas preceding and following the second appearance are removed; in paragraph (g), the introductory text is revised, in paragraphs (g)(1) through (3), the semicolons are removed and periods are added in their place, in paragraph (g)(4), the semicolon and the word "and" are removed and a period is added in their place, and a new paragraph (g)(6) is added; in paragraph (h), in the introductory text, the words "or quarterly" are revised to read "or more frequent"; and paragraphs (f) and (i) are revised to read as follows:

#### § 641.5 Recordkeeping and reporting.

\* \* \* \* \*

(b) *Vessels and persons fishing with fish traps.* The owner or operator of a vessel or a person on a structure permitted under § 641.4 to fish with a fish trap in the Gulf of Mexico EEZ or who fishes in adjoining State waters must maintain a fishing record on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director so as to be received not later than 7 days after the end of each fishing trip or, in the case of a person fishing with fish traps from a structure, not later than 7 days after the end of each month. If no fishing occurred during a month, a report so stating must be submitted on one of the forms to be received not later than 7 days after the end of each month. If fishing occurred, the following information must be reported:

\* \* \* \* \*

(2) Pounds of catch of reef fish by species for each type of gear used.

\* \* \* \* \*

(c) *Vessels not fishing with fish traps.* The owner or operator of a vessel that is permitted under § 641.4 to fish with gear other than fish traps in the Gulf of Mexico EEZ, or who fishes in adjoining State waters, and who is selected by the Science and Research Director, must maintain a fishing record for each fishing trip on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director on a monthly basis (or more frequently, if requested by the Science and Research Director) so as to be received not later than the 7th day of the end of the reporting period. If no fishing occurred during a month, a report so stating must be submitted on one of the forms. If fishing occurred, the following information must be reported for each trip:

\* \* \* \* \*

(f) *Charter vessels.* The owner or operator of a charter vessel that fishes for or lands reef fish under the bag limits in the Gulf of Mexico EEZ or in adjoining State waters, and who is selected to report, must maintain a daily fishing record for each trip on forms provided by the Science and Research Director, and must submit the forms to the Science and Research Director weekly within 7 days of the end of each week (Sunday). Information on the forms includes, but is not limited to the following:

- (1) Name and official number of vessel.
- (2) Operator's Coast Guard license number.
- (3) Date and duration of fishing (hours) of each trip.
- (4) Number of fishermen on trip.
- (5) Fishing location, by statistical area.
- (6) Fishing methods and type of gear.
- (7) Species targeted.
- (8) Number and estimated weight of fish caught by species.

(g) *Headboats.* The owner or operator of a headboat that fishes for or lands reef fish in the Gulf of Mexico EEZ or in adjoining State waters, and who is selected to report, must maintain a fishing record for each trip, or a portion of such trips as specified by the Science and Research Director, on forms provided by the Science and Research Director and must report the following information at least monthly within 7 days of the end of each month:

\* \* \* \* \*



(6) Operator's U.S. Coast Guard license number.

(i) *Additional data and inspection.* Additional data will be collected by authorized statistical reporting agents, as designees of the Science and Research Director, and by authorized officers. An owner or operator of a fishing vessel, a person fishing traps from a structure, and a dealer or processor are required upon request to make reef fish or parts thereof available for inspection by the Science and Research Director or an authorized officer.

6. Effective April 23, 1990, § 641.6 is revised to read as follows:

**§ 641.6 Vessel, structure, and gear identification.**

(a) *Vessels.* (1) A vessel for which a permit has been issued under § 641.4 must display its official number—

(i) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(ii) In block arabic numerals in contrasting color to the background;

(iii) At least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels; and

(iv) Permanently affixed to or painted on the vessel.

(2) In addition, a vessel for which a permit has been issued under § 641.4 to fish with fish traps must display its color code—

(i) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(ii) In the form of a circle at least 20 inches in diameter; and

(iii) Permanently affixed to or painted on the vessel.

(b) *Structures.* A person fishing from a structure with a fish trap who has been issued a permit under § 641.4 must display his permit number and color code—

(1) So as to be clearly visible from an enforcement vessel or aircraft;

(2) With the permit number in block arabic numerals in contrasting color to the background;

(3) With the permit number at least 10 inches in height;

(4) With the color code in the form of a circle at least 20 inches in diameter; and

(5) Permanently affixed to or painted on the structure.

(c) *Duties of operator or person.* The operator of each fishing vessel specified

in paragraph (a) of this section or person specified in paragraph (b) of this section must—

(1) Keep the official number or permit number and color code clearly legible and in good repair, and

(2) Ensure that no part of the fishing vessel or structure, its rigging, fishing gear, or any other material aboard obstructs the view of the official number or permit number and color code from any enforcement vessel or aircraft.

(d) *Fish traps.* Each fish trap used or possessed in the EEZ must have affixed to it an identification tag provided by the Regional Director that displays the assigned permit number, a number (normally 1–100) indicating the specific tag number for that trap, and the year for which the tag was issued. A tag for the current year must be affixed to a trap before its first use in a new year or, if in use on January 1, when it is first tended after January 1.

(e) *Buoys.* Each fish trap, or the ends of a string of fish traps, must be marked by a floating buoy or by a buoy designed to be submerged and automatically released. Each buoy used to mark fish traps must display the designated color code and permit number so as to be easily distinguished, located, and identified.

(f) *Presumption of ownership.* A fish trap in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to traps that are lost or sold if the owner reports the loss or sale within 15 days to the Regional Director.

(g) *Unmarked traps or buoys.* An unmarked fish trap or buoy deployed in the EEZ is illegal and may be disposed of in any appropriate manner by the Secretary (including an authorized officer). If an owner of an unmarked trap or buoy can be ascertained, such owner is subject to appropriate civil penalties.

**7. In § 641.7,**

a. Effective from February 21, 1990 through April 23, 1990, in paragraph (a) the comma and phrase "as required by § 641.4" are removed and paragraphs (a) and (b) are redesignated as paragraphs (t) and (u), after which period of effectiveness paragraphs (t) and (u) are removed; and

b. Effective February 21, 1990, paragraphs (c) through (k) are removed; new paragraphs (a) through (s) are added; and new paragraphs (b), (e), (p), (r), and (s) are stayed until April 23, 1990 to read as follows:

**§ 641.7 Prohibitions.**

(a) Falsify information specified in § 641.4(b)(2) on an application for a vessel permit.

(b) Fail to display a permit, as specified in § 641.4(h).

(c) Falsify or fail to provide information required to be submitted or reported, as required by § 641.5(b) through (h).

(d) Fail to make reef fish or parts thereof available for inspection, as required by § 641.5(i).

(e) Falsify or fail to display and maintain vessel, structure, and gear identification, as required by § 641.6.

(f) Possess a reef fish smaller than the minimum size limits, as specified in § 641.21(a).

(g) Possess a reef fish without its head and fins intact, as specified in § 641.21(b).

(h) Fish with poisons or explosives or possess on board a fishing vessel any dynamite or similar explosive substance, as specified in § 641.22(a).

(i) Use or possess in the EEZ a fish trap that does not conform to the requirements for escape windows, degradable openings, and mesh sizes specified in § 641.22(b)(1), (2), and (3).

(j) Use in the EEZ shoreward of the 50-fathom isobath a fish trap that exceeds the maximum allowable size specified in § 641.22(b)(4).

(k) Fish or possess in the EEZ more than 100 fish traps per vessel or structure, as specified in § 641.22(b)(5).

(l) Pull or trend a fish trap, except during the hours specified in § 641.22(b)(6)(i); or tend, open, pull, or otherwise molest or have in possession another person's fish trap, except as specified in § 641.22(b)(6)(ii).

(m) Use a powerhead to take reef fish of the management unit in the stressed area, as specified in § 641.23(a)(l).

(n) Use a fish trap or a roller trawl in the stressed area, as specified in § 641.23(a)(2).

(o) Use a longline or buoy gear to fish for reef fish in the longline and buoy gear restricted area, as specified in § 641.23(b).

(p) Exceed the bag and possession limits, as specified in § 641.24(a) through (d).

(q) Operate a vessel with reef fish aboard that are smaller than the minimum size limits, do not have head and fins intact, or are in excess of the cumulative bag limit, as specified in §§ 641.21(c) and 641.24(e).

(r) Transfer reef fish at sea, as specified in § 641.24(f).

(s) Purchase, barter, trade, or sell a reef fish taken by a vessel that does not have a permit or by a person fishing from a structure who does not have a



permit, as specified in § 641.4(a), or taken under the bag limits, as specified in § 641.24(g).

8. Effective February 21, 1990, in § 641.24, Figure 4 is redesignated as Appendix A, Figure 3; § 641.26 is redesignated as § 641.28; §§ 641.21 through 641.25 are revised; new §§ 641.26 and 641.27 are added; and newly revised § 641.24 is stayed until April 23, 1990 to read as follows:

#### § 641.21 Harvest limitations.

(a) *Minimum sizes.* The following minimum size limits apply for the possession of reef fish in or taken from the EEZ:

(1) Red snapper—13 inches total length.

(2) Gray, mutton, and yellowtail snappers—12 inches total length.

(3) Lane and vermilion snappers—8 inches total length.

(4) Jewfish—50 inches total length.

(5) Red, Nassau, yellowfin, and black groupers and gag—20 inches total length.

(6) Greater amberjack—28 inches fork length for a fish taken by a person subject to the bag limit specified in § 641.24(b)(4) and 36 inches fork length, for a fish taken by a person not subject to the bag limit.

(7) Black sea bass—8 inches total length.

(b) *Head and fins intact.* A reef fish subject to a minimum size limit specified in paragraph (a) of this section possessed in the EEZ must have its head and fins intact and such reef fish taken from the EEZ must have its head and fins intact through landing. Such reef fish may be eviscerated but must otherwise be maintained in a whole condition.

(c) *Operator responsibility.* The operator of a vessel that fishes in the EEZ is responsible for ensuring that reef fish possessed aboard that vessel comply with the minimum sizes specified in paragraph (a) of this section and are maintained with head and fins intact as specified in paragraph (b) of this section.

#### § 641.22 Gear restrictions.

(a) *Poisons and explosives.* Poisons and explosives may not be used to take reef fish in the EEZ; however, powerheads may be used outside the stressed area. A vessel in the reef fish fishery may not possess on board any dynamite or similar explosive substance.

(b) *Fish traps.* A fish trap used or possessed in the EEZ and a person using a fish trap in the EEZ are subject to the following requirements and limitations:

(1) *Escape windows.* Each trap must have at least two escape windows on each of two sides, excluding the bottom (a total of four escape windows), that are 2×2 inches or larger.

(2) *Openings and degradable fasteners.*

(i) A degradable panel or access door must be located opposite each side of the trap that has a funnel.

(ii) The opening covered by each degradable panel or access door must be 144 square inches or larger, with one dimension of the area equal to or larger than the largest interior axis of the trap's throat (funnel) with no other dimension less than 6 inches.

(iii) The hinges and fasteners of each degradable panel or access door must be constructed of one of the following materials:

(A) Untreated jute string of 3/16-inch diameter or smaller; or

(B) Magnesium alloy, time float releases (pop-up devices) or similar magnesium alloy fasteners.

(3) *Mesh sizes.* A fish trap must meet all of the following mesh size requirements (based on centerline measurements between opposite wires or netting strands) (see Appendix A, Figure 3):

(i) A minimum of 2 square inches of opening for each mesh;

(ii) One-inch minimum length for the shortest side;

(iii) Minimum distance of 1 inch between parallel sides of rectangular openings, and 1.5 inches between parallel sides of square openings and of mesh openings with more than four sides; and

(iv) One and nine-tenths (1.9) inches minimum distance for diagonal measures of mesh.

(4) *Maximum allowable size.* The maximum allowable size for a fish trap fished in the EEZ shoreward of the 50-fathom isobath (300-foot contour) is 33 cubic feet in volume. Fish trap volume is determined by measuring the external dimensions of the trap, and includes both the enclosed holding capacity of the trap and the volume of the funnel(s) within those dimensions. There is no size limitation for fish traps fished seaward of the 50-fathom isobath.

(5) *Effort limitation.* The maximum number of traps that may be assigned to, possessed, or fished in the EEZ by a vessel or from a structure is 100.

(6) *Tending traps.*

(i) A reef fish trap may be pulled or tended only during the period from official (civil) sunrise to official (civil) sunset.

(ii) A reef fish trap may be tended only by a person (other than an authorized officer) aboard the vessel

permitted to fish such trap, or aboard another vessel if such vessel has on board written consent of the vessel permit holder.

#### § 641.23 Area limitations.

(a) *Stressed area.*

(1) A powerhead may not be used in the stressed area to take reef fish of the management unit. Possession of a powerhead and a mutilated reef fish of the management unit in the stressed area or after having fished in the stressed area constitutes *prima facie* evidence that such reef fish was taken with a powerhead in the stressed area.

(2) A fish trap or a roller trawl may not be used in the stressed area. A fish trap used in the stressed area will be considered unclaimed or abandoned property and may be disposed of in any appropriate manner by the Secretary (including an authorized officer). If an owner of such fish trap can be ascertained, such owner is subject to appropriate civil penalties.

(3) The stressed area is that portion of the EEZ in the Gulf of Mexico shoreward of a line connecting the points listed in Appendix A, Table 1. (See also Appendix A, Figure 4.)

(b) *Longline and buoy gear restricted area.*

(1) Longline and buoy gear may not be used to fish for reef fish in the longline and buoy gear restricted area. For the purposes of this paragraph (b), fishing for reef fish means possessing or landing reef fish—

(i) For which a bag limit is specified in § 641.24(b), in excess of that bag limit; or

(ii) For which no bag limit is specified, in excess of 5 percent by weight of all fish aboard or landed.

(2) A person aboard a vessel that uses on any trip longline or buoy gear in the longline and buoy gear restricted area to fish for species other than reef fish is limited on that trip to the bag limits specified in § 641.24(b) and, for other reef fish, to 5 percent by weight of all fish aboard the vessel or landed.

(3) The longline and buoy gear restricted area is that portion of the EEZ in the Gulf of Mexico shoreward of a line connecting the points listed in Appendix A, Table 2. (See also Appendix A, Figure 5.)

#### § 641.24 Bag and possession limits.

(a) *Applicability.* Bag limits apply to a person who fishes in the EEZ—

(1) From a fixed structure without a permit specified in § 641.4;

(2) From a vessel—

(i) That does not have on board a permit specified in § 641.4,



(ii) With trawl gear or entangling net gear on board.

(iii) With a longline or buoy gear on board when such vessel is fishing or has fished on its present trip in the longline and buoy gear restricted area specified in § 641.23(b), or

(iv) That is carrying a passenger who fishes for a fee; or

(3) For a species for which the quota specified in § 641.25 has been reached and closure has been effected.

(b) *Bag limits.* Daily bag limits are:

(1) Red snapper—7.

(2) Snappers, excluding red, lane, and vermillion snapper—10.

(3) Groupers—5.

(4) Greater amberjack—3.

(c) *Possession limits.* A person subject to a bag limit may not possess in or from the EEZ during a single day, regardless of the number of trips or the duration of a trip, any reef fish in excess of the bag limits specified in paragraph (b) of this section, except that a person who is on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is aboard a charter vessel or headboat, and,

(1) The vessel has two licensed operators aboard as required by the U.S. Coast Guard for trips of over 12 hours, and

(2) Each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(d) *Combination of bag limits.* A person who fishes in the EEZ may not combine a bag limit specified in paragraph (b) of this section with a bag or possession limit applicable to State waters.

(e) *Responsibility for bag and possession limits.* The operator of a vessel that fishes in the EEZ is responsible for the cumulative bag or possession limit applicable to that vessel, based on the number of persons aboard.

(f) *Transfer of reef fish.* A person for whom a bag or possession limit specified in paragraph (b) or (c) of this section applies may not transfer at sea a reef fish—

(1) Taken in the EEZ; or

(2) In the EEZ, regardless of where such reef fish was taken.

(g) *Sale.* A reef fish taken under the bag limits specified in paragraph (b) of this section may not be purchased, bartered, traded, or sold.

#### § 641.25 Commercial quotas.

Persons who are fishing under a permit issued pursuant to § 641.4, provided they are not subject to the bag limits specified in § 641.24, are subject to the following quotas each fishing year:

(a) Red snapper—3.1 million pounds.

(b) Yellowedge, misty, warsaw, and snowy grouper (deep-water groupers), combined—1.8 million pounds.

(c) All other groupers, excluding jewfish, combined—9.2 million pounds.

#### § 641.26 Closures.

When a commercial quota specified in § 641.25 is reached, or is projected to be reached, the Secretary will publish a notice to that effect in the *Federal Register*. After the effective date of such notice, for the remainder of the fishing year, the bag limit will apply to all harvest in the EEZ of the indicated species, and the purchase, barter, trade, and sale of the indicated species taken

from the EEZ is prohibited. This prohibition does not apply to trade in the indicated species that were harvested, landed, and bartered, traded, or sold prior to the effective date of the notice in the *Federal Register* and were held in cold storage by a dealer or processor.

#### § 641.27 Exemptions for the groundfish trawl fishery.

(a) The requirements of §§ 641.4(a)(1) and 641.24(a)(2)(ii) notwithstanding, the owner or operator of a vessel in the groundfish trawl fishery is exempt from the bag limits for its unsorted catch of reef fish and is not required to obtain a permit in order to sell the vessel's unsorted catch of reef fish or to be exempt from the bag limits for the vessel's unsorted catch of reef fish.

(b) The requirements of § 641.21(a) notwithstanding, the minimum size limits do not apply to the unsorted catch of a vessel in the groundfish trawl fishery.

(c) The requirements of § 641.26 notwithstanding, after a closure, the bag limits and the prohibition on purchase, barter, trade, or sale do not apply to the unsorted catch of reef fish in the groundfish trawl fishery.

(d) The harvest limitations of § 641.21 and the bag and possession limits of § 641.24 apply to any reef fish that may be sorted from the catch of a vessel in the groundfish trawl fishery.

9. Effective February 21, 1990, a new Appendix A is added to part 641 consisting of new Tables 1 and 2, newly redesignated Figures 1, 2, and 3, and new Figures 4 and 5 to read as follows: Appendix A to part 641—Tables and Figures.

TABLE 1.—SEAWARD COORDINATES OF THE STRESSED AREA

Point No. and reference location <sup>1</sup>	North latitude	West longitude
1 Seaward limit of Florida's waters northeast of Dry Tortugas.....	24°45.5'	82°41.5'
2 North of Marquesas Keys.....	24°48.0'	82°06.5'
3 Off Cape Sable.....	25°15.0'	82°02.0'
4 Off Sanibel Island—Inshore.....	26°26.0'	82°29.0'
5 Off Sanibel Island—Offshore.....	26°26.0'	82°59.0'
6 West of Egmont Key.....	27°30.0'	83°21.5'
7 Off Anclote Keys—Offshore.....	28°10.0'	83°45.0'
8 Off Anclote Keys—Inshore.....	28°10.0'	83°14.0'
9 Off Deadman Bay.....	29°38.0'	84°00.0'
10 Seaward limit of Florida's waters east of Cape St. George.....	29°35.5'	84°38.6'
Thence westerly along the seaward limit of Florida's waters to		
11 Seaward limit of Florida's waters south of Cape San Blas.....	29°32.2'	85°27.1'
12 Southwest of Cape San Blas.....	29°30.5'	85°52.0'
13 Off St. Andrew Bay.....	29°53.0'	86°10.0'
14 De Soto Canyon.....	30°06.0'	86°55.0'
15 South of Florida/Alabama border.....	29°34.5'	87°38.0'
16 Off Mobile Bay.....	29°41.0'	88°00.0'
17 South of Alabama/Mississippi border.....	30°01.5'	88°23.7'
18 Horn/Chandeleur Islands.....	30°01.5'	88°40.5'
19 Chandeleur Islands.....	29°35.5'	88°37.0'
20 Seaward limit of Louisiana's waters off North Pass of the Mississippi River.....	29°16.3'	89°00.0'



TABLE 1.—SEAWARD COORDINATES OF THE STRESSED AREA—Continued

Point No. and reference location <sup>1</sup>	North latitude	West longitude
Thence southerly and westerly along the seaward limit of Louisiana's waters to		
21 Seaward limit of Louisiana's waters off Southwest Pass of the Mississippi River.....	28°57.3'	89°28.2'
22 Southeast of Grand Isle.....	29°09.0'	89°47.0'
23 Quick flashing horn buoy south of Isles Derfieres.....	28°32.5'	90°42.0'
24 Southeast of Calcasieu Pass.....	29°10.0'	92°37.0'
25 South of Sabine Pass—10 fathoms.....	29°09.0'	93°41.0'
26 South of Sabine Pass—30 fathoms.....	28°21.5'	93°28.0'
27 East of Aransas Pass.....	27°49.0'	96°19.5'
28 East of Baffin Bay.....	27°12.0'	96°51.0'
29 Northeast of Port Mansfield.....	26°46.5'	96°52.0'
30 Northeast of Port Isabel.....	26°21.5'	96°35.0'
31 U.S./Mexico EEZ boundary.....	26°00.5'	96°36.0'
Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of Texas' waters.		

<sup>1</sup> Nearest identifiable landfall, boundary, navigational aid, or submarine area.

TABLE 2.—SEAWARD COORDINATES OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA

Point No. and reference location <sup>1</sup>	North latitude	West longitude
1 Seaward limit of Florida's waters north of Dry Tortugas.....	24°48.0'	82°48.0'
2 North of Rebecca Shoal.....	25°07.5'	82°34.0'
3 Off Sanibel Island—Offshore.....	26°26.0'	82°59.0'
4 West of Egmont Key.....	27°30.0'	83°21.5'
5 Off Anclote Keys—Offshore.....	28°10.0'	83°45.0'
6 Southeast corner of Florida Middle Ground.....	28°11.0'	84°00.0'
7 Southwest corner of Florida Middle Ground.....	28°11.0'	84°07.0'
8 West corner of Florida Middle Ground.....	28°26.6'	84°24.8'
9 Northwest corner of Florida Middle Ground.....	28°42.5'	84°24.8'
10 South of Carrabelle.....	29°05.0'	84°47.0'
11 South of Cape St. George.....	29°02.5'	85°09.0'
12 South of Cape San Blas lighted bell buoy—20 fathoms.....	29°21.0'	85°30.0'
13 South of Cape San Blas lighted bell buoy—50 fathoms.....	28°58.7'	85°30.0'
14 De Soto Canyon.....	30°06.0'	86°55.0'
15 South of Pensacola.....	29°46.0'	87°19.0'
16 South of Perdido Bay.....	29°29.0'	87°27.5'
17 East of North Pass of the Mississippi River.....	29°14.5'	88°28.0'
18 South of Southwest Pass of the Mississippi River.....	28°46.5'	89°26.0'
19 Northwest tip of Mississippi Canyon.....	28°38.5'	90°08.5'
20 West side of Mississippi Canyon.....	28°34.5'	89°59.5'
21 South of Timbalier Bay.....	28°22.5'	90°02.5'
22 South of Terrebonne Bay.....	28°10.5'	90°31.5'
23 South of Freeport.....	27°58.0'	95°00.0'
24 Off Matagorda Island.....	27°43.0'	96°02.0'
25 Off Aransas Pass.....	27°30.0'	96°23.5'
26 Northeast of Port Mansfield.....	27°00.0'	96°39.0'
27 East of Port Mansfield.....	26°44.0'	96°37.5'
28 Northeast of Port Isabel.....	26°22.0'	96°21.0'
29 U.S./Mexico EEZ boundary.....	26°00.5'	96°24.5'
Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of Texas' waters.		

<sup>1</sup> Nearest identifiable landfall, boundary, navigational aid, or submarine area.



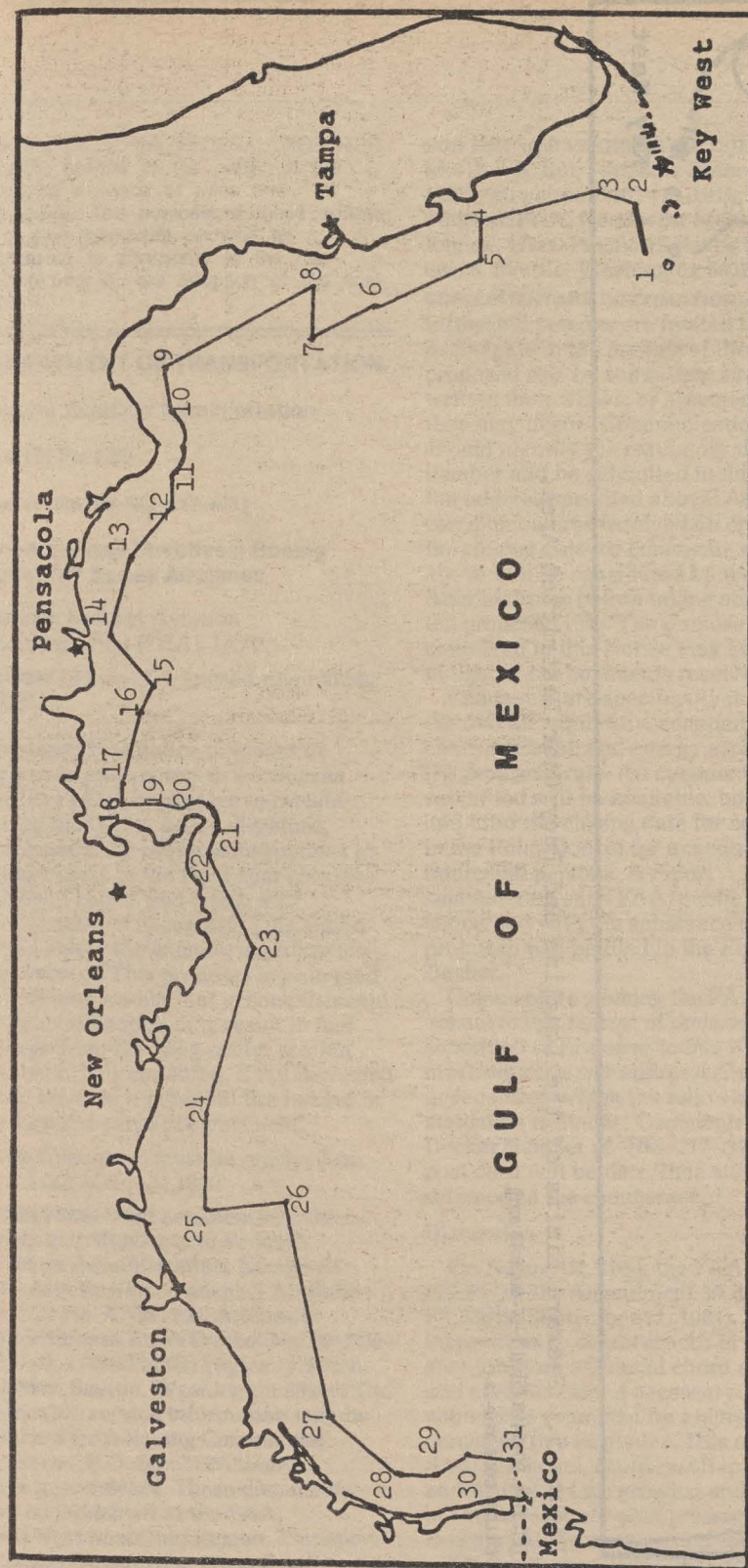


Figure 4. Seaward Limits of the Stressed Area.



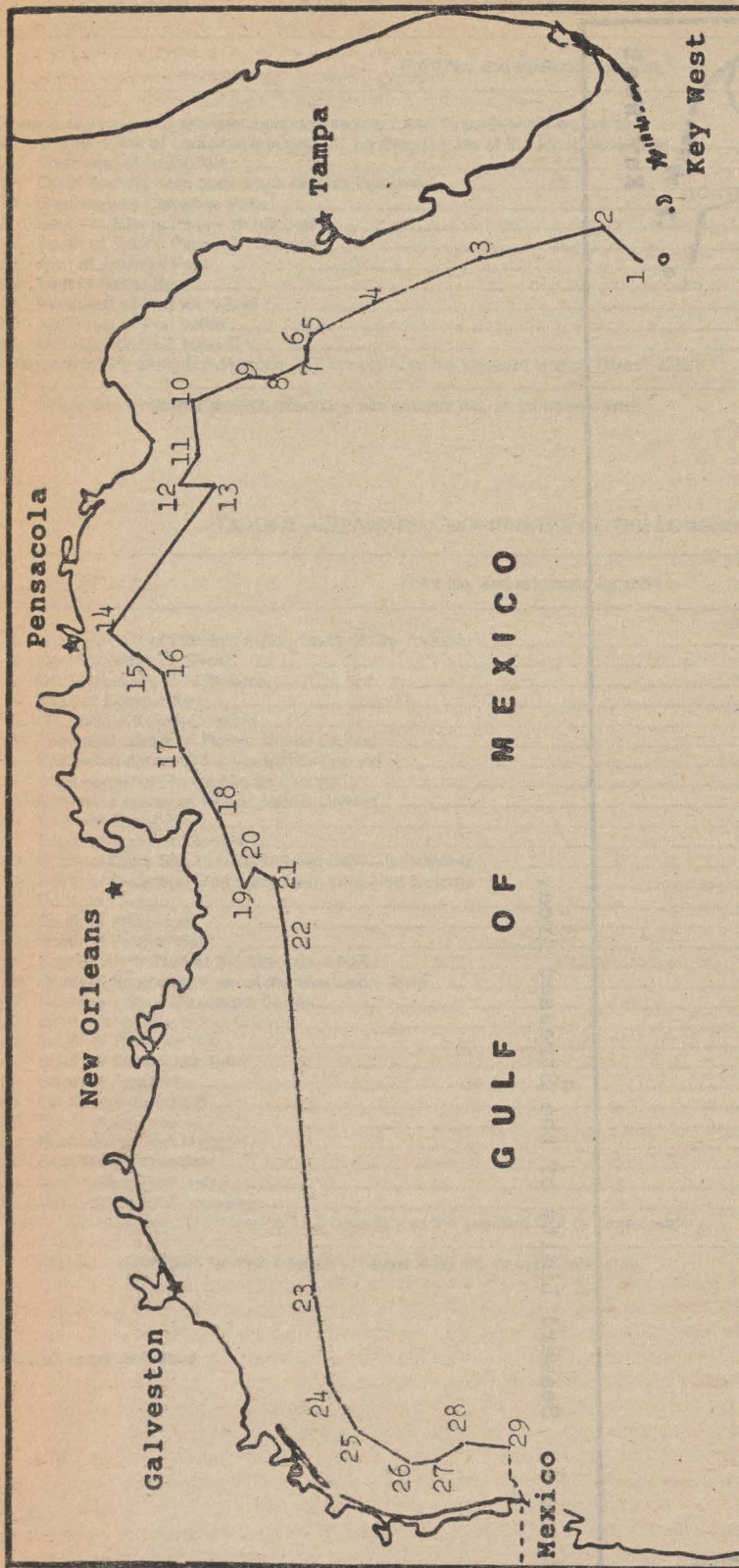


Figure 5. Seaward Limits of the Longline and Buoy Gear Restricted Area.

[FR Doc. 90-1418 Filed 1-17-90; 8:45 am]

BILLING CODE 3510-22-C